

AT A MEETING OF THE MONTGOMERY COUNTY PLANNING COMMISSION ON SEPTEMBER 14, 2011 IN THE BOARD ROOM, SECOND FLOOR, COUNTY GOVERNMENT CENTER, CHRISTIANSBURG, VIRGINIA:

**CALL TO ORDER:**

Mr. Rice, Chair called the meeting to order.

**DETERMINATION OF A QUORUM:**

Mr. Thum established the presence of a quorum.

Present:        Bryan Rice, Chair  
                    Ryan Thum, Secretary  
                    Joel Donahue, Member  
                    Malvin Wells, Member  
                    Frank Lau, Member  
                    John Tuttle, Member  
                    Walt Haynes, Vice-Chair  
                    Steve Sandy, Planning Director  
                    Dari Jenkins, Planning & Zoning Administrator  
                    Jamie MacLean, Development Planner  
                    Brea Hopkins, Planning & Zoning Technician

Absent:         William Seitz, Member  
                    Robert Miller, Member

**APPROVAL OF AGENDA:**

On a motion by Mr. Wells, seconded by Mr. Haynes, and unanimously carried the agenda was approved as amended with the corrected date.

**CONSENT AGENDA:**

On a motion by Mr. Donahue, seconded by Mr. Thum, and unanimously carried the consent agenda was approved.

**PUBLIC ADDRESS:**

Mr. Rice opened public address.

Mr. Brian Katz, 3653 Peppers Ferry Road, discussed the possibilities for ordinance changes. The site plan for University Travel buses has been approved but the quote for paving is approximately \$60,000. The area used for bus parking should not be considered public parking and: therefore, should not be required to be paved. He noted that he had offered to place no public parking signs, barriers, etc. if paving of the bus area was not required. The business owner should be able to decide whether or not to pave the parking area. Wilco, Avalon Enterprises, Crows Nest, etc. are examples of businesses located within the county that have gravel parking areas. An appropriate change to the ordinance that will address the issue is to eliminate the requirement from the code; or to add "with parking open to the public" as a requirement for paved areas.

Mr. Rice asked if tar and gravel was allowed in the ordinance.

Mr. Katz stated that it is not considered prime and double seal. The tar and gravel is much less expensive at \$20,000 but would not withstand the bus traffic. Since the parking area is not open to the public it should not be considered public parking area and should not have the paving requirement.

Mrs. Jenkins stated she had issued a determination and given Mr. Katz the opportunity to appeal to the BZA for them to modify, uphold, or reverse that decision. The BZA can also recommend ordinance amendments. The original concept plan depicted the buses parked on a concrete pad. The bus parking has been relocated from that area and now Mr. Katz is requesting it not be a paved area.

Mr. Thum asked what the process is for requesting an ordinance amendment.

Ms. Jenkins stated Mr. Katz can request the Board of Supervisors to look at it for amendment; however, the most immediate results would be to obtain a decision from the Board of Zoning Appeals.

Mr. Thum noted there isn't a lot of disagreement in what the ordinance says; however, it is the clarity of the ordinance.

Mr. Rice stated it appears Mr. Katz agrees the interpretation is correct; however, believes the ordinance needs to be revised.

Mr. Donahue asked about the consequences of non-compliance.

Mr. Sandy stated the business would have to be removed from the property and the SUP approval could be revoked.

Ms. Jenkins stated no site improvements have been made since the approval in December or the site plan approval in June.

Mr. Thum stated there was no recourse this evening; however, Mr. Katz will need to go through the proper channels for the amendment.

Mr. Haynes stated direction is needed from the Board of Supervisors, so Mr. Katz may need to appear before them.

Mr. Lau noted this is a difficult issue for the applicant because of asphalt maintenance issues.

Mr. Rice noted there was also a conflict in stormwater quality issues, dust issues, etc. There probably should be some type of variance for special circumstances.

Mr. Sandy stated an exception process needs to be included in the code if that is the desire. The Board of Supervisors discussed this issue on Monday night and they did mention a joint work session with the planning commission. There are a couple of properties that are experiencing similar problems.

Mr. Wells noted that most supervisors were not in favor of changing the ordinance for a select few properties; however, they did discuss a joint meeting.

There being no further speakers, Mr. Rice closed the public address.

## **OLD BUSINESS:**

Hairston May Subdivision Variance

On a motion by Mr. Donahue, seconded by Mr. Thum and unanimously carried the Planning Commission removed the Hairston/May Subdivision Variance from the table for discussion.

Mrs. Maclean stated the subdivision variance request was discussed at the last meeting and tabled to allow the county an opportunity to meet with VDOT. Staff has met with VDOT and discussed the process for subdivision plat reviews. VDOT has stated they will review plats and schedule meetings with planning staff for those properties that have specific concerns or issues. She reviewed the section allowing a variance to the subdivision ordinance. The applicant has submitted the following as justification for a variance; expense, hardship, existence of the road, not self-inflicted, etc. The applicant did speak with staff in the summer of 2010; however, the plat was not received until May 2011 and the ordinance was revised in the interim. Surveyors were notified of all proposed amendments. The approval of the variance could be deemed a detriment to the health, safety, and welfare of the traveling public plus set precedence for future cases and those people seeking to bypass the VDOT approval process. In addition, staff is of the opinion that a variance compromises ordinance intent.

Mr. Thum asked if VDOT had indicated which entrance was reviewed for the plat approval.

Mrs. MacLean showed the entrance reviewed; however, VDOT noted that neither location had sufficient sight distance. There are already 16 lots on the private road.

Mr. Wells stated the plat shows three (3) lots to be created; however, something was mentioned about two (2) lots being requested.

Mrs. MacLean clarified that the applicant has revised the plat to create two (2) lots; however, VDOT still has to review the plat. They reviewed the plat in June and commented that they were unable to approve the plat because sight distance could not be met.

Mr. Donahue stated he was concerned that no chance had been given to the neighbors for comment. It is an administrative issue between VDOT and County staff. VDOT has an ordinance to help the Tidewater area; however, it doesn't apply to this area. They are discouraging new entrances and increased traffic on noncompliant entrances/roads. He noted that he would suggest the applicant work with VDOT to improve or upgrade the entrance.

Mr. Rice stated he could not vote to overrule VDOT because they are the traffic engineers.

Mr. Christman, surveyor, stated dealing with VDOT can be a frustrating ordeal. They stated the sight distance requirements could not be met; therefore, nothing could ever be done with the property. Clients have acquired additional land for frontage and are only requesting two (2) lots. Hawley Road has existed for decades and is shown as a private road. By creating only two (2) parcels, there will not be a substantial amount of traffic added to the road and it would not cause increased risks of health, safety, or welfare. It is not possible to improve the intersection as the clients do not own the property. When the additional property was acquired, a forty (40) foot right of way was dedicated from the client's property to Walton Road. The argument regarding precedence means anyone with large properties would be precluded from giving property to family, etc. which also goes against the intent of the ordinance. The only option for the proposed subdivision is a variance because VDOT will not cooperate.

Mr. Wells noted he did not believe that creating two (2) additional lots would be detrimental; however, further development without improvements could be an issue in the future.

Mr. Sandy noted that VDOT only regulates the intersection with Walton Road. The County ordinance requires VDOT approve the plat and VDOT will not sign the plat because of intersection issues. VDOT has had the regulation for several years and were requesting an opportunity to view the plats. The County amended the ordinance to require VDOT approval. That has put VDOT in the

position of having to refuse approval of plats. It is the opinion of staff that they work with the VDOT Land Use Engineer in Salem, and get direction on potential options for these properties. VDOT is working on revisions to sight distance requirements. The issue for the Planning Commission is: Do we want to give a variance to allow surveyors to bypass VDOT for approval? VDOT's argument is why keep allowing more lots on private roads without safe entrances.

Mr. Thum noted he was concerned about having a property owner stuck because VDOT didn't take due diligence in reviewing the proposal.

Mr. Sandy stated he was not sure about the options, such as waivers, variances, etc. available through VDOT.

Mr. Christman stated under the new streets section there is a statement for private roads that must be included on the plat.

Mr. Haynes noted the Planning Commission was not the proper authority to be granting the variance. The applicant should be requesting a waiver from VDOT.

Mr. Thum made a motion, seconded by Mr. Lau to recommend approval of the Hairston May Subdivision Variance

Mrs. Hopkins called the roll and the motion failed (2-5) with the following vote:

AYES: Thum, Lau

NAYES: Tuttle, Haynes, Donahue, Wells, Rice

ABSTAIN: None

## **WORK SESSION:**

On a motion by Mr. Thum seconded by Mr. Haynes and unanimously carried the Planning Commission entered into work session.

### Lafayette Plan

Mr. Sandy stated staff was still reviewing the draft plan from the consultants. The court case involving the intermodal facility was heard today and a decision is expected in November. Staff got an extension from the consultant until December 15<sup>th</sup> to allow that decision to be factored into the plan.

### Wind ordinance

Mrs. Hopkins stated staff has been working on amendment(s) to various sections of the zoning ordinance to incorporate Small Wind Energy System regulations. Many localities have similar ordinances with deviations to height and permitting requirements. Currently staff is proposing to add Small Wind Energy Systems up to 75 ft. in height as an allowed by right use in the Agricultural (A-1), Conservation (C-1), General Business (GB), Community Business (CB), Manufacturing (M-1), Manufacturing Light (M-L) and to add Small Wind Energy Systems up to 100 feet in height as a special use permit in the Agricultural (A-1), Conservation (C-1), General Business (GB), Community Business (CB), Manufacturing (M-1), Manufacturing Light (M-L), Planned Unit Development Traditional Neighborhood Development (PUD-TND), Traditional Neighborhood Development Infill (TND), Planned Industrial (PIN), Planned Unit Development

Commercial (PUD-COM), Planned Unit Development Residential (PUD-RES), Planned Mobile Home Residential Park (PMR). She reviewed other regulations included such as: limits on noise, lighting, signage, certification standards, compliance with other federal, state, and local regulations, distance between blades and ground (recommend 15 ft), type of wind system, and removal regulations if abandoned or defective. Definitions relating to the small wind energy system will also need to be added to Section 10-61. Mrs. Hopkins noted that staff is requesting suggestions or comments regarding the proposed amendments and upon consensus of the planning commission the amendments will be presented in ordinance form at the next meeting.

The Planning Commission discussed the number of small wind systems that would be allowed on property, the proposed height, noise regulations, etc.

It was the consensus of the commission to present a draft ordinance at the October meeting.

On a motion by Mr. Haynes, seconded by Mr. Thum and unanimously carried the Planning Commission closed their worksession.

### **LIAISON REPORTS:**

- Board of Supervisors- No report
- Agriculture & Forestal District- No report.
- Blacksburg Planning Commission – Mr. Lau stated the Blacksburg Planning Commission was discussing a conditional use permit for the old Blacksburg National Bank site.
- Christiansburg Planning Commission – Mr. Rice stated the Christiansburg Planning Commission was revising their comprehensive plan and scheduling committee meetings.
- Economic Development Committee- Mr. Tuttle stated a representative from New River Community College spoke regarding solar panels in operation.
- Public Service Authority – No report.
- Parks & Recreation- No report.
- Radford Planning Commission- No report.
- School Board- No report.
- Transportation Safety Committee- Mr. Wells stated the committee had a discussion regarding the Alleghany Springs Road Bridge. The proposed work has been delayed until 2012. There was also some discussion regarding the I81 traffic and blasting operations. It was reported that the core drilling on North Fork is complete.
- Planning Director's Report- Mr. Sandy stated the ground breaking for the Auburn School complex is Monday at 3:30 and the Blacksburg High School on October 11th at 3:30 pm. The Board of Supervisors will hold one (1) meeting in December. Staff suggests the Planning Commission meeting be moved to December 7th so applications can be forwarded to the Board of Supervisors without delay.